IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1095 of 2005
AND
CIVIL APPLICATION NO.7085 OF 2005
In
SPECIAL CIVIL APPLICATION No. 13436 of 2005

WITH
LETTERS PATENT APPEAL No. 1096 of 2005
AND
CIVIL APPLICATION NO.7086 OF 2005
In
SPECIAL CIVIL APPLICATION No. 13659 of 2005

WITH
LETTERS PATENT APPEAL No. 1097 of 2005
AND
CIVIL APPLICATION NO.7087 OF 2005
In
SPECIAL CIVIL APPLICATION No. 14349 of 2005

WITH

LETTERS PATENT APPEAL No. 1098 of 2005
AND
CIVIL APPLICATION NO.7088 OF 2005
In
SPECIAL CIVIL APPLICATION No. 14336 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE SHARAD D.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

HON'BLE JUSTICE R.J.SHAH COMMITTEE (MEDICAL)
Versus
GSF MEDICAL & PARA MEDICAL ASSOCIATION AND ANOTHER

==========

Appearance :
Mr.Bhaskar P.Tanna, Senior Advocate,assisted by Ms.Mahrook N.Kerravala, Advocate, on behalf of the appellant in L.P.A.Nos.1095 to 1098 of 2005.

Mr.Paresh Darji for Mr.Mitul K.Shelat,advocate for respondent No.1 in L.P.A.No.1095/2005.

Mr.D.C.Dave,advocate for respondent No.1 in Letters Patent Appeal Nos.1096 to 1098 of 2005.

Mr.A.J.Desai,learned Assistant Government Pleader for respondent No.2 in L.P.A.Nos.1095 to 1098 of 2005.

==========

CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 08/12/2005

COMMON **ORAL JUDGMENT**

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

These appeals are directed against the common

judgment dated 1.8.2005 of the learned Single Judge in a group of petitions which were filed by self financed Institutions running medical and para-medical colleges.

The common question raised in the said petitions was pertaining to fixation of management quota and Government quota seats. After hearing the learned counsel for the parties, the learned Single Judge quashed and set aside the impugned decision of the authorities dated 2.7.2005 and, thereafter, gave the following directions:

> "So far as present academic year 2005-06 is concerned, as the time is running out, I, therefore, allow the petitioners to admit the students upto 50% of total intake capacity as management quota seats, for the current academic year, i.e. 2005-06.
>
> ***** ****** ******
>
> Thus, the time is running out as the outer time limit is fast approaching, therefore, in this academic year i.e. 2005-06, the ratio of quota will be 50:50 percentage in Private Professional Unaided Non-minority Institutions. I hereby direct the respondents to decide henceforth, quota of seats in light of the aforesaid observations and factors which are referred in the above cited/referred judicial pronouncements."

When the appeals reached admission hearing they came to be admitted by order dated 10.8.2005. However, no interim stay was granted. Accordingly the

judgment under appeal has already been implemented in case of all the four institutions, which were petitioners before the learned Single Judge.

By the time these appeals have reached final hearing, the Hon'ble Supreme Court has already pronounced the judgment on August 12,2005 in the case of P.A.Inamdar v. State of Maharashtra, (2005)6 SCC 537. In the aforesaid judgment the bench of seven Judges of the Hon'ble Supreme Court has recorded the following conclusions in the matter of fixation of State quota in unaided private professional educational institutions.

> "127. Nowhere in Pai Foundation either in the majority or in the minority opinion, have we found any justification for imposing seat-sharing quota by the State on unaided private professional educational institutions and reservation policy of the State or State quota seats or management seats.
> 128. We make it clear that the observations in Pai Foundation in para 68 and other paragraphs mentioning fixation of percentage of quota are to be read and understood as possible consensual arrangements which can be reached between unaided private professional institutions and the State.
> 129. In Pai Foundation it has been very clearly held at several places that unaided professional institutions should be given greater autonomy in determination of admission procedure and fee structure. State regulation should be minimal and only with a view to maintain fairness and transparency in admission procedure and to check exploitation of the students by charging

> exorbitant money or capitation fees.
> 130. For the aforesaid reasons, we cannot approve of the scheme evolved in Islamic Academy to the extent it allows the States to fix quota for seat-sharing between the management and the States on the basis of local needs of each State, in the unaided private educational institutions of both minority and non-minority categories. That part of the judgment in Islamic Academy in our considered opinion, does not lay down the correct law and runs counter to Pai Foundation."

Ofcourse the judgment further makes it clear that it is to be given prospective effect as stated in paragraph 154 of the judgment:

> "154. We are also conscious of the fact that admission process in several professional educational institutions has already commenced. Some admissions have been made or are in the process of being made in consonance with the schemes and procedures as approved by Committees and in some cases pursuant to interim directions made by this Court or by the High Courts. This judgment shall not have the effect of disturbing the admissions already made or with regard to which the process has already commenced. The law, as laid down in this judgment, shall be given effect to from the academic year commencing next after the pronouncement of this judgment."

In view of the aforesaid clear pronouncement of the Hon'ble Supreme Court which concludes the controversy about fixation of seats in self financed medical and para-medical colleges with effect from academic year 2006-07 and in view of the fact that for the current academic year i.e. 2005-06 the

judgment under appeal has already been implemented, the present appeals have become infructuous. Therefore,the appeals are dismissed as infructuous without going into the merits of the contentions raised by the appellant.

We may not be treated to have expressed any view either way on the reasoning adopted or findings given by the learned Single Judge.

Since the appeals are dismissed, the Civil Applications do not survive and are also dismissed.

(M.S.Shah,J)

(Sharad D.Dave,J)

arg